

At An Audit Meeting / Work Session
Of the Town Board of the Town of Newburgh held
At 1496 Route 300 in said township at 7:00 P.M.
On the 28th day of January, 2004

Roll Call: Wayne C. Booth, Supervisor
George A. Woolsey, Councilman
Derek N. Benedict, Councilman
James E. Manley, Councilman
Gilbert J. Piaquadio, Councilman

Also Present: Mark C. Taylor, Attorney for the Town of Newburgh
James W. Osborne, Town Engineer
Andrew J. Zarutskie, Town Clerk
Charlene M. Black, Deputy Town Clerk

1. Pledge of Allegiance to the Flag led by Town of Newburgh Chief of Police, Charles Kehoe.

2. Additional Items for Discussion from Board Members

9. Code Compliance: Computer Purchase

4. d. Auto Spa: Discussion

3. Approval of Audit

MOTION was made by Councilman Benedict to approve the Audit as presented in the amount of \$1,267,306.88, seconded by Councilman Piaquadio.

VOTE: Mr. Woolsey – aye; Mr. Benedict – aye; Mr. Manley – aye; Mr. Piaquadio – aye; Mr. Booth – aye. Motion passed 5-0.

4. Engineering:

a. Drury Heights and Exeter Projects: Service Road and Utilities

To explain this item, Arthur Tully and David Higgins, representatives from Lanc & Tully Engineering and Stephen Lopez a representative from Tim Miller Associates, came forward. The Town owns property that abuts both the Exeter property at the back corner and the Drury Heights property at the northeast corner. The Exeter project has been in front of the Planning Board at many work sessions and we have had discussions working with the Drury Heights project on several issues. The first issue is the 100 foot area property of the Drury Heights that is adjacent to the Exeter project. We would like to shift the cul-de-sac away from the homes in Colden Park and add a larger buffer area between the proposed townhouses of the Exeter project and the existing homes in Colden Park. The second thing is emergency access between the two projects, which would cut off the southern end of the Exeter project and route down into the Drury Heights project and through a small portion of the Town's property. There were concerns from the residents of Colden Park of the access going through their development, so we looked at alternatives for both projects. That is what we have proposed for land use between the two projects and the emergency access between the two projects. We have had meetings with the Engineer about the sewer and water. The Exeter project needs to be included in the Sewer District and an out of district water user. There are improvements that need to be made regarding the water system which we are contemplating about contributing to. There is a pump station on Rte. 52 that needs to be upgraded and improved. There is a sewer line on 17K and drains Holiday Park into Colden Park and the pump station in Colden Park has problems from time to time because of I & I flows. We would take some of the flows and divert it to our project at a new pump station which will handle the Exeter project and Holiday Park. The Drury Heights project is a 140 lot subdivision. This project will also put in a pump station to handle the sewer flows from Drury Heights. This project anticipates a Capital contribution to upgrading the Colden Park pump station and also looking at the I & I flow problems and the discharge requirements. We are here essentially for permission to put the sewer and water lines through the Town owned parcel. Jim Osborne, Town Engineer, explained what the concept was from the two applicants. Drury Heights – improvements to the

Colden Park pump station, additional contribution of \$500.00 in the outside user fee to be paid to the Colden Park sewer district for I & I work on top of the \$3500.00 per unit that is currently required in the outside user agreement. Drury Heights will be taking the water main from in front of Fleetwood / Holiday Park on 17K and bring it down Drury Lane. Exeter will bring their water in from 17K. With respect to both projects they should be approved for extensions of the water district and this will require the Town notifying New York City and possibly have our contract modified to include these two systems. Both projects will be outside users to Crossroads Sewer District. Councilman Benedict asked about the poor infrastructure in Colden Park now and Mr. Osborne said the contribution of \$500.00 will go directly to Colden Park to address their problems. Jim said he is cautious because everyone is under the impression that both projects are moving forward. That might not be the case. Drury Heights has been on and off the table since the mid eighties. We need to make sure both projects stand alone as far as sanitary disposal and water supplies. Councilman Woolsey asked if there was talk about the emergency access being made a through road? Exeter is a condominium project which means private roads, so to provide a Town road access which is Drury Heights' proposed Town road, onto a private road on any other basis but an emergency access, could be touchy. Councilman Woolsey said that Drury Heights isn't a private road so extend it and make that a town road. If there is an emergency whether it's a Town road or not, they are going to use it. The details of the construction have not been made yet, just the fact that an access road was to be constructed between both projects. Councilman Piaquadio said his concern is the sewer connection. The lines in Colden Park are at least twenty years old, will this project help upgrade them? Supervisor Booth explained that if they go through Colden Park that will one of the requirements to upgrade. They have an I & I problem and they are capital poor in their capital improvements. Jim Osborne explained that the tests that were done show that the pipes are structurally sound but there are repairs that do need to be done. Supervisor Booth said he has talked to the property owners in Colden Park who border these projects and they are very unhappy. They did not want these access roads going through their park. Lane DeMuro, the owner of the Drury Heights project, explained how many things are trying to be accomplished tonight but the two main subjects are the emergency access roads and the water / sewer issue. Lane DeMuro also spoke to Colden Park residents and he got the same impression, the residents do not want the access road through their park. Mr. DeMuro said that they don't have an objection to move the road. If you look at the Exeter map, the original layout of the condominiums, they back up very close to Colden Park. The Drury Heights project is actually going to give Exeter some of their property, so this can be shifted away from Colden Park. We need an indication from the Board whether or not they could bring the water and sewer lines and tie into Colden Park. The Drury Heights project would like to treat the emergency access as a separate issue. The connection of water and sewer is essential to both projects. Councilman Manley asked if the Board did not grant the project outside the water district or outside the sewer district, how would the project be treated. The property was already granted outside user status about ten years ago. Mr. DeMuro said they were granted outside user status on the sewer district. Jim Osborne explained that a portion of the property was in the water district. Mark Taylor, Attorney for the Town, explained that the Town is going through a Comprehensive Plan process. You can not rely on any of the conceptual discussion here in respect to this Board's discretion in analyzing the change of zoning of the comprehensive plan process. This is an upfront disclaimer. If this Board makes a decision and the comprehensive plan committee makes zoning changes, do not rely on this discussion. In respect to the access road, it is the water district's property whether a Town road is created or an emergency access is created by an easement or if the conveyance district will have to be paid, or the value of the property that will be used as a Town road is not for district purpose. In respect to the use of the property for water and sewer connections, it will be the determination of the Town Board whether or not it will be to our benefit. As for water, Drury Heights was in a district extension which was based on a map, plan and report on a certain sub-division. This project differs substantially from that map, plan and report. The district process went through for approval but not the final order of establishment until the system was in place. There is a district extension process that

went through to a certain point based on a map, plan and report for a certain system. You are now proposing another system. If you were proposing the same system, Mark would recognize the fact that your project had vested rights. Mark recommends will be to show some kind of amendatory process in respect to the district establishment. Since the projects are progressing separately, there will be likely two separate district extensions rather than treating them as outside users. That is a requirement with New York City, because it is the district that is in contract with the Town. District extensions mean a public hearing process for the developer and it is also subject to SEQR. This Board will not act to finally establish those districts until the SEQR process is final for both projects. As for the sewers, outside user agreement status was awarded by the Town in the late 80's which was for the Drury Heights project for a certain number of units. That is still in place and Exeter will have to apply for outside user status. There are issues as to whether or not to be an outside user to the Colden Park district or Crossroads district. There will be both outside user payment of \$3500.00 or whatever is in place at the time. Other the \$500.00 per unit capital contribution. Mr. DeMuro thought that once you were in the water district, the method of payment was in question and that was the document that was not executed. Mark explained that after reviewing the document it provides for the record but there was a public hearing, the Board adopted a resolution approving the extension to the water district. It also said they are not finalizing the district until the improvements were installed. Mr. DeMuro asked how do the improvements get installed if you don't have outside user status? Jim Osborne, Town Engineer, asked Mark if the concept on the map, plan and report include all of the Drury Heights project or just the portion? Mark said just a portion. Councilman Manley asked if it was assumed that when the projects went in front of the Planning Board that the Town was going to provide water. It is part of the DEIS process to explore everything. There is water available, it is a matter of an approval process and payment and whether we get in the district or not, is a decision on the Board's part. If we are not approved and we have to revisit this process we might have to revisit the multi family. If we have to go through all this again, we will have to do it. This issue never came up two years ago and we feel we have certain legal rights that Mark has not addressed. We feel we are in the water district and the outside user status for the sewer. To get the numbers they gave us, they had to put both parcels together. This is probably why this project has been floundering since 1988, but it doesn't seem to get to a point where anything can be committed. Councilman Manley explained this is the first the Board is seeing this project and we are not ready to give any kind of decision tonight. Mr. DeMuro wants to make it clear that they have been through this before and tonight is the first they were told about the interpretation of the water and sewer issue. Mark Taylor, Attorney for the Town, was just a simple statement for the record and he is not asking to have any of this project's rights surrendered. He is only suggesting, in respect to the water district, this should be the way it is approached. Mr. DeMuro just doesn't want to go back to square one. What order do we take things in now? Councilman Woolsey would like to digest this and meet with our advisors. The Board would like any kind of back up from these projects so they can see the scope of the projects. We will meet at another time when the Board has had a chance to look everything over.

b. Greiner Performance Security (Morris Drive)

This is a request from Jim Osborne, Town Engineer, to release the Maintenance Security of \$3980.00. The owner / developer has been in contact with him and would like his security released. Jim explained that he has a report from the Highway Superintendent, explaining that everything is okay with the road. The maintenance security was to be held for two years, 01/01 until 01/10/03. The problem is the money was transferred into the General Fund because we had it longer than six years (that was when the project first started). The Town Board accepted the road in 2001. We need to find out from Jackie Calarco, Town Accountant, where we can pull the money from and the total amount. There will be interest on this money. We will get this information before the meeting on Monday night.

c. Marino Drive Dedication

Mark Taylor, Town Account, explained that Darrell Benedict, Highway Superintendent and Jim Osborne, Town Engineer both signed off on this dedication. Councilman Woolsey would like letters from both the Town Engineer and the Town Attorney as back up on this approval. Councilman Woolsey wanted to know who has to approve this before it comes to us for our signatures? Mark Taylor, Attorney for the Town, explained there has to be two formal approvals under Town Law and State Law. The Town Board and the Superintendent of Highways needs to approve. Under our code as opposed to State Law, there needs to be two other approvals. The Town's Attorney and the Town Engineer also need to approve. The Offer of Dedication paperwork was distributed to the Town Board for their signature.

MOTION was made by Councilman Manley to accept the Offer of Dedication for Marino Drive, seconded by Councilman Piaquadio.

VOTE: Mr. Woolsey – aye; Mr. Benedict – aye; Mr. Manley – aye; Mr. Piaquadio – aye; Mr. Booth – aye. Motion passed 5-0.

d. Auto Spa: Discussion

Councilman Manley explained how it came to his attention that the Board was not given all the facts when the approval was given to the Auto Spa. We weren't told that there will be washers that will use 80 gallons of water. We need to get the whole scope of the project before we approve these projects. Everyone is suppose to be on an honor system. Jim Osborne, Town Engineer, explained he has received a follow up letter in this matter and will forward the memo to the Board.

5. Police**a. Capital Items Bonding Resolution**

This resolution has come before the Board several times. Chief Kehoe came forward to explain the need for these vehicles and equipment. Supervisor Booth explained that the bond is for \$165,000.00 and \$132,000.00 is for the Police Department. Councilman Piaquadio doesn't feel bonding is the way to go, these should have been budgeted items. This is not good accounting procedure. If you have to bond for short term items, it shows how desperate you are. But the main concern is we need Police cars. As for the equipment, could we use the seizure money to pay for these items? Chief Kehoe said there is a little over seven thousand dollars in that account. The Chief said he really doesn't want to use all the seizure money because he likes to have a cushion for investigations. We don't seize large amounts of money all that often and we have to share what we do get with the County and the Feds. Supervisor Booth explained that this will not be done on a regular basis but it needs to be done. We got hit with a \$1.5 million dollar retirement payment. The Chief explained how many of his cars are almost up to the max of mileage. Councilman Woolsey suggested not hiring another officer and a Code Compliance person to make up for buying the cars / equipment. The fact is that the Chief had \$141,000.00 left in his 2003 budget and he could have bought these cars. Councilman Woolsey said he is not opposed to the Chief buying these cars, just the bonding part. We are bonding our children and grandchildren's future away. If the bonding was for something major like a highway project or sewer project, Councilman Woolsey would not object. These cars should have been in the budget. Councilman Piaquadio said they were in the Chief's budget but got cut. Councilman Woolsey said we mirrored the Chief's budget from last year and if we forgo one officer which is \$50,000.00 and what was left from last year's budget, we can buy these cars and equipment. We have to wait until the final numbers come in from the Accountant to see where we stand. The Chief also mentioned that any time we can go to Code Red or Orange for any extended time or if we have any major crimes that would eat the budget. With a budget at \$4.5 million dollars and to have only \$141,000.00 left over, is not much. Councilman Benedict wanted to know if we could pay the bond back early? The answer was no. What about a B.A.N.? Mark Taylor, Attorney for the Town believes a B.A.N. can be paid back, say at the end of the year. This is something Jackie Calarco, Town Accountant, would have to answer. Chief Kehoe said the problem we have is we have a contractual agreement with the PBA that states after 95,000 miles the cars have to be parked. If we don't buy the cars this year, next year we would need ten to twelve

cars. Chief Kehoe said we need to put the order in by the second week of February or we will lose the State Bid price.

MOTION was made by Councilman Manley to approve the Resolution of SEQR Type II Determination: Capital Items of Equipment and Vehicles For Police and Engineering Departments, seconded by Councilman Benedict.

VOTE: Mr. Woolsey – nay; Mr. Benedict – aye; Mr. Manley – aye; Mr. Piaquadio – aye; Mr. Booth – aye. Motion passed 4-1.

9:00 A five minute recess was called.

9:06 Meeting commenced.

B. K-9 Vehicle Addendum

Supervisor Booth explained that the K-9 Addendum is an addendum to the PBA contract. Chief Kehoe explained that they starting letting the Canine Officers to utilize their vehicles, the cars assigned to them, to transport the canines and the officer to and from their home and to and from the Police Department. This was as of last April, 2003. We have had in the past are decisions under the standard act Garcia and also a County lawsuit decision against the Town when one these officers was transporting one of the canines in his personal vehicle and had an accident. He couldn't receive Workers' Compensation because of the fact the Garcia Ruling he was deemed as working by transporting the animal in his vehicle who belonged to the Town. To help short circuit problems in the future, we have allowed the officer to transport the canine in their patrol cars. In order to do that, we have to use those cars in excess of the 95,000 miles and go to 125,000 miles. In order to do this without violating the present contract, we need to have an addendum to the contract stating that we will use those particular cars for 125,000 miles. Officer Douglas Scott, who is also the PBA President, explained that we as of now have a canine unit that is in excess of the 95,000 miles and if this does not pass, the Town would be in jeopardy of losing this vehicle. Officer Scott explained that he was the officer in the accident and subsequent to that, the Workers Comp judge ruled that he was technically working at the time of the accident by transporting the canine, which is Town property. He also explained that his personal Auto Insurance found out that the Town was going to pay for all his medical bills, they would not renew his insurance because they felt the officer was doing Police business in his personal car. The car was totaled and was not paid by the Town. There is a liability issue. When you drive the canine car, on the car it states "Caution Police Dogs". When we take the dogs home, we have kennels that state "Caution Police Dog." If someone is bitten, it is stated. Other agencies let their canine officers take home their patrol cars. Yonkers PD, for example, which is much larger than our PD, has a policy right now that took back the vehicles and they were compensated financially for their personal vehicles, but the liability issue came up again. They will be going back to taking the vehicles home again. The bottom line is we want to put this to rest. The Chief said we should have them but what does the Town get back. We are giving 30,000 miles per car. On a canine car that is a lot because only one officer uses this car and the miles do not accumulate like a regular patrol car. The PBA membership voted on this and the next step was to bring it to the Town Board. It is a win-win situation for the Town. Councilman Piaquadio said this is an easy one but Supervisor Booth explained that the Board would like to look this over and vote on it at Monday night's meeting which is a public meeting. If there are any questions by our counsel, he will call you directly.

c. Active Duty Status: Officer Stephen G. Ryther

This is a request from Chief Kehoe to approve the difference in salary for Officer Stephen G. Ryther, while he is in active duty. His tour of duty started on January 22, 2004, with a minimum of one year tour, January 22, 2005. The difference in pay from the military pay is \$7.0243 hourly or \$280.97 weekly. It has been the practice of the Town to approve this request in the past.

MOTION was made by Councilman Woolsey to approve the request to pay the difference in salary in the amount of \$7.0243 per hour or \$280.97 weekly to Officer Stephen Ryther while in active duty, seconded by Councilman Manley.

VOTE: Mr. Woolsey – aye; Mr. Benedict – aye; Mr. Manley – aye; Mr. Piaquadio – aye; Mr. Booth – aye. Motion passed 5-0.

6. Sewer

a. Colden Park Sewer District Survey

Supervisor Booth explained that the survey is complete and we need to send it out the Colden Park residents. There are approximately 170 residents that live there. This will give the Board a feeling on how the residents would like to do with the 9.6 acres. This survey gives them the different options and how to rank them. The Supervisor would everyone to review the survey and if they have any questions or concerns to bring it back for Monday night's meeting.

b. Moratorium Discussion

The moratorium we have in place now expires on February 23, 2004. We need to schedule a Public Hearing to extend for another period of time. The Board feels an one year extension should be adequate. On Monday we will schedule the Public Hearing for February 11, 2004 at 7:00. Mark Taylor, Attorney for the Town, will have the proper paperwork for us then.

7. Town Hall Expansion: Discussion

Councilman Piaquadio said we need a base bid price of what we need and hopefully we can afford it. Then add on "dream" options as we go along. There was talk about record storage. There might be federal money for this. Also this roof (meeting room roof), it has to go. You can not re-roof it. Jim Osborne, Town Engineer, said that the current roof structure is such that it can not be roofed over. It had to be taken off and replaced with a conventional system. The original plans were to go out the back but after talking to different people, we decided to out the two sides of the building so it would be at grade instead of below grade. There was nothing extravagant. There were two things that made the price go up. The schedule that was laid out by the architect. We were going to try to maintain operations while construction was going on. The whole roof was going to be replaced, to make repairs easier. Councilman Piaquadio asked if there was still \$1.5 million in the Capital Reserve? Supervisor Booth said something like that. Councilman Piaquadio said that a large portion had to been used in Engineering fees and bidding. Councilman Piaquadio said in his opinion, Mr. Silverman, the low bidder and the Board should meet and get their opinions on where to cut down. Supervisor Booth said there are things that have to be done. Regardless if we use the Capital Reserve money or budget money. Councilman Woolsey said we would never be able to do it all with budget money. There are two options: long term or short term. Long term would be to see if we can relocate or short term, we can do what needs to be done. With the money we have, we can not build a new Town Hall. Councilman Manley said this Board should look at long term. Band aiding this building is great but where will we be in five – ten years? Bonding rates are the best ever and Councilman Woolsey said so are the prices on Capital projects way out of sight and untouchable. We definitely need a roof on this building, it's been leaking for at least the past four years. Jim Osborne, Town Engineer, explained that for history the contract was signed for an expansion of this building. The other Board did not look at another option. Councilman Piaquadio said that the State would lease us property for ninety nine years on Governor's Drive and we could build new. Supervisor Booth said there is a vacant building in the Northeast Business Center. These are things the Board needs to think about to get this project going.

8. Town Clerk's Office: Discussion of Military Display

Mr. Zarutskie, Town Clerk, explained that the last meeting the discussion of the Military Display was brought up. Mr. Zarutskie said he would like to install a board over by the pay phone where the anti drug poster is. Mr. Zarutskie priced the boards and a real fancy board is \$244.00 but we do not need one that fancy or expensive. He said he can keep it at \$150.00. We would like snapshot size pictures or wallet.

MOTION was made by Councilman Manley to authorize Mr. Zarutskie to proceed

with the purchase of the board for the Tribute to our Iraqi Hero Display, seconded by Councilman Benedict.

VOTE: Mr. Woolsey – aye; Mr. Benedict – aye; Mr. Manley – aye; Mr. Piaquadio – aye; Mr. Booth – aye. Motion passed 5-0.

9. Code Compliance: Computer Purchase

This was brought up at the last meeting but we failed to approve Tom Masten to purchase the computers for Code Compliance. Tom feels the \$20,000.00 would give him a cushion in case there are any added items needed or any problems. This money is to be taken out of the Computer Reserve Fund.

MOTION was made by Councilman Woolsey to approve Tom Masten to purchase the computers for Code Compliance at a cost not to exceed \$20,000.00 and to be taken from the Computer Reserve Fund, seconded by Councilman Piaquadio.

VOTE: Mr. Woolsey – aye; Mr. Benedict – aye; Mr. Manley – aye; Mr. Piaquadio – aye; Mr. Booth – aye. Motion passed 5-0.

MOTION was made by Councilman Piaquadio to enter into Executive Session at 10:08 P.M., seconded by Councilman Woolsey.

VOTE: Mr. Woolsey – aye; Mr. Benedict – aye; Mr. Manley – aye; Mr. Piaquadio – aye; Mr. Booth – aye. Motion passed 5-0.

10. Executive Session:

a. Joseph Beard vs. Town of Newburgh: Update

b. 17K Associates (Holiday Inn) Tax Certiorari Litigation

c. Freedom of Information Appeal: Chrysler vs. Town of Newburgh and Mark Taylor

d. WPA Acquisitions vs. Town of Newburgh

MOTION was made by Councilman Piaquadio to end Executive Session at 11:08 P.M., seconded by Councilman Manley.

VOTE: Mr. Woolsey – aye; Mr. Benedict – aye; Mr. Manley – aye; Mr. Piaquadio – aye; Mr. Booth – aye. Motion passed 5-0.

No action was taken at the Executive Session.

Adjournment

MOTION was made by Councilman Benedict to adjourn the Audit Meeting / Work Session of January 28, 2004 at 11:09 P.M., seconded by Councilman Manley.

VOTE: Mr. Woolsey – aye; Mr. Benedict – aye; Mr. Manley – aye; Mr. Piaquadio – aye; Mr. Booth – aye. Motion passed 5-0.

Andrew J. Zarutskie, Town Clerk

by

Charlene M. Black, Deputy Town Clerk